

Introduction

This is a book about marriages that breached borders. Some of these marriages involved couples who wed across state lines, literally crossing geographic boundaries to ensure the validity of their unions. Others involved couples who defied legislation in their quest to exchange vows, actively breaching the divide between lawful and unlawful nuptials. All of the marriages examined in this book breached a more abstract set of borders – those ideological boundaries between decent and indecent, reputable and disreputable, moral and immoral. Moreover, all of these marginal marriages sparked extensive backlash, and deepened the early twentieth-century fear that the institution of marriage was in a state of crisis.

Many types of marriages occupied that hazy space between legitimate and illegitimate from the turn of the twentieth century through the Second World War, and *Conjugal Misconduct* examines a diverse array of them. The first type of marital nonconformity in question involves couples who found one another through newspaper personal advertisements and matchmaking bureaus. These individuals looked beyond the geographic borders that typically limited one's spousal options, using the US mails to broaden their romantic possibilities. Critics of such practices accused participants of using an impersonal and immoral mechanism to seek companionship and of letting mercenary motives compromise their quest for love. Meanwhile, the operators of matchmaking bureaus and matrimonial journals faced criticism for exploiting the loneliness of single people and for trivializing the institution of marriage in the name of profit.

The next set of individuals in question took part in a phenomenon known interchangeably as “progressive polygamy,” “consecutive polygamy,” and “tandem polygamy.” A person acquired the label of progressive polygamist after divorcing one partner and remarrying another in rapid succession, flouting the expectation that marriage be a lifelong commitment. In many states, hasty remarriage after divorce was an unlawful practice; as a result, people who longed to marry new spouses in the days or months after getting divorced might elope in neighboring states with looser remarriage codes. Such unions did not always hold up in courts of law after the newlyweds returned home.

Couples might also cross state borders to evade eugenic marriage laws. These laws, which were passed in several states during the 1910s, demanded that couples prove they were free from syphilis, among other physical and mental conditions, before they could exchange vows. Many couples refused to undergo medical testing as a prerequisite for marriage: some were unwilling to pay for expensive antibody tests, others knew they would not pass the doctor’s examination, and still others objected to eugenic marriage laws in principle. Still wishing to wed, however, a portion of these noncompliant couples dodged their home states’ eugenic requirements by eloping to states with more lenient marriage laws, risking fines and jail time upon returning home.

Another practice that pushed the boundaries of matrimonial propriety was widely known as trial marriage. The term “trial marriage” was used to describe several marital configurations. Some couples were ambivalent about committing to a lifetime together, particularly when they resided in states with stringent divorce codes. Recognizing this reluctance, a set of early twentieth-century scholars argued that childless couples should be able to end their unions without great legal impediment, using the term “trial marriage” to define this arrangement. The expression was also employed to describe the relations of celebrity couples who wed on the condition that they would break off their nuptials if either party became unsatisfied. These provisional unions were particularly popular within upper-class bohemian circles, and they tended to generate extensive – and overwhelmingly skeptical – newspaper coverage. Finally, the term “trial marriage” came to encompass marriages between underage couples, who in some states held the legal option to annul their unions as long as one or both partners remained below the age of consent. Despite the differences between these three domestic models, critics indiscriminately labeled them “trial

marriage” as a means of stigmatizing couples who were not committed to permanent wedlock.

Marriage across racial borders also produced great anxiety. Long the source of legal and cultural conflict, black-white intermarriage challenged marital tradition in novel ways throughout the 1920s and 1930s. Thirty of forty-eight states held firm antimiscegenation laws in these years, and many would continue to enforce such laws until the Supreme Court declared them unconstitutional with its 1967 *Loving v. Virginia* decision. Nonetheless, vibrant public debates over interracial intimacy arose in states where marriage across racial lines was legal, and the increasing visibility of mixed-race couples sparked ongoing efforts to erase intermarriage through new legislation and judicial loopholes. Meanwhile, a small but vocal group of writers fed into the debate by advertising widespread interracial marriage as a strategy for dissolving the color line and instilling racial harmony throughout the country.

Challenges to marital convention, what I refer to as acts of conjugal misconduct, fed an ever-deepening fear that the institution of marriage was losing its luster. The unconventional marriages I discuss throughout the book led to ongoing forms of conservative backlash. That backlash manifested itself in the legal sphere, as state and local lawmakers sought to temper conjugal misconduct with restrictions on commercialized matchmaking, hasty remarriage, trial marriage, and other disreputable unions. Backlash also emerged outside the law, culminating in the development of a coercive marriage education and counseling movement that came to prominence in the 1930s. This movement, to be explored in the book’s final chapter, arose when a group of educators and social scientists determined that law alone was insufficient to tackle the “marriage crisis” at hand. In response, they devised a program of counseling, coursework, and cultural indoctrination to restore their vision of marital tradition to a society that was exploring new options.

The marital nonconformists profiled in this book received outsized attention for their irregular romantic practices. They were by no means the first to defy marital convention, however, as several nineteenth-century groups had gained notoriety for shunning formal state and religious marriage ceremonies, encouraging nonprocreative intercourse, discouraging monogamy, and establishing large and elaborate kin networks rather than discrete nuclear family units. Some of these groups, such as the Free Lovers, rejected the institution of marriage altogether and publicly argued for its dismantling. Others, among them the Mormons and the

Oneida community, practiced nonmonogamous forms of matrimony. In spite of their many ideological differences, these nineteenth-century groups were united in their self-conscious efforts to create alternatives to monogamous marriage.¹

Such vocal challenges to the marital status quo would diminish in the late nineteenth century alongside Anthony Comstock's crusade against obscenity and the circulation of information about birth control. Comstock's advocacy led Congress to pass a law in 1873, widely known as the Comstock Act, which criminalized the circulation of any "obscene, lewd or lascivious" materials through the US mails. Radical groups were subject to great persecution under the Comstock Act for publicizing their unconventional views on sexuality and marriage, and as a result of Comstock's persistent attacks, these groups ceased to broadcast their message by century's end.²

The relationships examined in this book simultaneously drew from and discarded earlier challenges to traditional marriage. While nineteenth-century radical groups attempted to eliminate major tenets of American marriage such as monogamy and reproduction, the twentieth-century subjects of the book sought to bring their own disreputable romantic arrangements within the confines of marital propriety. And while many nineteenth-century sex radicals wished to eradicate the institution of marriage altogether, the twentieth-century couples hoped to attain marital legitimacy and the social status that accompanied it. Nineteenth-century marital nonconformists ultimately withered under a legal code that deemed their relations immoral and obscene. Later

¹ See Helen Lefkowitz Horowitz, *Rereading Sex: Battles over Sexual Knowledge and Suppression in Nineteenth-Century America* (New York: Alfred A. Knopf, 2002); Joanne E. Passet, *Sex Radicals and the Quest for Women's Equality* (Urbana: University of Illinois Press, 2003); John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper & Row, 1988), 109–138; Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, Mass.: Harvard University Press, 2000), 105–131; Hal D. Sears, *The Sex Radicals: Free Love in High Victorian America* (Lawrence: Regents Press of Kansas, 1977); Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2002); Clare Virginia Eby, *Until Choice Do Us Part: Marriage Reform in the Progressive Era* (Chicago: University of Chicago Press, 2014), 7.

² D'Emilio and Freedman, *Intimate Matters*, 159–163; Horowitz, *Rereading Sex*, 358–385; Cott, *Public Vows*, 124–131; Christina Simmons, *Making Marriage Modern: Women's Sexuality from the Progressive Era to World War II* (New York: Oxford University Press, 2009), 9.

participants in nontraditional marital arrangements hoped to avoid similar persecution.³

* * *

Why, then, did acts of conjugal misconduct spark so much backlash at the turn of the twentieth century? To understand this backlash, one must first understand the broader transformations that the institution of marriage underwent throughout the 1800s. Marriage in the nineteenth century was grounded in the law of coverture. Under that doctrine, a husband and wife were one person in law. Thus, a married woman became a *feme covert* – her rights to own property, to earn wages, and to sue in a court of law were “covered” by the authority of her husband, who in return provided protection and support to his wife and family. Through this arrangement, the husband was expected to function as breadwinner, and the wife to maintain an orderly home. Though a wife might need to earn wages to supplement her husband’s income, the law of coverture ensured that those wages remained the property of the husband, even if he was unemployed and generating no income of his own. Laws of coverture thus ensured that the relationship between husband and wife remained one of protector and dependent.⁴

Related to the doctrine of coverture was the idea that marriage served primarily as an economic arrangement. Although Western European and North American couples started to marry for love in the early eighteenth century, economic and political factors continued to play a major role in mate selection throughout the 1800s.⁵ Over the course of the nineteenth

³ Eby makes a similar point in her discussion of progressive marital reform: “Unlike more radical experimenters such as free-lovers, Greenwich Village bohemians, Mormon polygamists, or hippies, progressives sought to reform – not replace – long-term, monogamous heterosexual pairings.” *Until Choice Do Us Part*, 7.

⁴ Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998); Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982); Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986); Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 1995), 31–32; Timothy Marr, “The Shifting Monument of American Marriage,” *American Quarterly* 53, no. 4 (2001): 692; Loren Schwening, *Families in Crisis in the Old South: Divorce, Slavery, and the Law* (Chapel Hill: University of North Carolina Press, 2012), 80–97.

⁵ Stephanie Coontz, *Marriage, a History: How Love Conquered Marriage* (New York: Penguin, 2005), 145–146.

century, a marriage was generally considered successful if the bride and groom's families held comparable levels of wealth and similar social positions. A young man from an affluent family could increase his status by marrying a young woman from a similar financial background, and she would benefit in return. By seeking economic equals as marriage partners, wealthy brides and grooms protected themselves from social climbers who saw marriage as a path to high society living.⁶ Poorer couples also viewed marriage as a means of consolidating family resources, increasing labor forces, and improving chances for land and property acquisition.⁷ For poor and working-class individuals, these practical concerns did not always leave room for questions of romance and personal affinity in the formation of conjugal partnerships.

Gradually the economic model of mate selection faded from view, and by the turn of twentieth century it had been replaced by the notion that romantic love, emotional intimacy, and sexual fulfillment were the staples of a successful union.⁸ This shift toward personal choice in mate selection came with risks, however, in allowing the possibility that an individual might select a socially inappropriate partner. What was to be done, for instance, if a young man wed across racial or class lines, or if he wished to marry a woman with a venereal disease? How could the celebration of individual choice be reconciled with the many other social codes that dictated the boundaries of marital propriety? In this sense, the modern ideal of love and personal compatibility stood at odds with the fear that too much free choice prevented individuals from selecting socially appropriate mates.

Accentuating this tension was an underlying social panic over the shifting tides of gender and sexuality. As industrial growth led more

⁶ See Charlene M. Boyer Lewis, *Ladies and Gentlemen on Display: Planter Society at the Virginia Springs, 1790–1860* (Charlottesville: University Press of Virginia, 2001), 145–150; Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill: University of North Carolina Press, 1988), 207; Steven M. Stowe, *Intimacy and Power in the Old South: Ritual in the Lives of the Planters* (Baltimore: Johns Hopkins University Press, 1987), 150.

⁷ Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982), 217–222.

⁸ George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890–1940* (New York: Basic Books, 1994), 117; Lewis A. Erenberg, *Steppin' Out: New York Nightlife and the Transformation of American Culture, 1890–1930* (Chicago: University of Chicago Press, 1981), 155–156. Industrialization and urbanization in the late 1800s played an indirect role in this shift. See William Leach, *Land of Desire: Merchants, Power, and the Rise of a New American Culture* (New York: Pantheon, 1993), 5–6.

and more women into urban employment and recreation, middle-class reformers feared the moral temptations that might entice young women in the public sphere. Between the 1870s and 1910s, state and federal officials made persistent attempts to restrict female sexuality through the enactment and enforcement of laws prohibiting prostitution, contraception, abortion, homosexuality, adultery, and the circulation of obscene materials.⁹ In 1910, Congress passed the Mann Act, also known as the White Slave Traffic Act. This law made it a federal offense for men to transport women across state borders for the “purpose of prostitution or debauchery, or for any other immoral purpose,” including acts of consensual sex.¹⁰ Thereafter, vice commissioners sought to close down all city brothels in an effort to eliminate venereal disease and other social evils from urban districts.¹¹

Adolescents became prime targets of moral reform as youthful sexual experimentation increased in visibility. A growing number of turn-of-the-century brides exchanged vows while pregnant, and studies revealed that more and more adolescents engaged in premarital sexual activity.¹² The issue of youthful sex became all the more prevalent in 1890, when the US Census Bureau added “age of marriage” as a category. Between 1890 and 1930, the census revealed that approximately 343,000 women married at

⁹ Mary E. Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885–1920* (Chapel Hill: University of North Carolina Press, 1995); Catherine Cocks, “Rethinking Sexuality in the Progressive Era,” *Journal of the Gilded Age and Progressive Era* 5, no. 2 (2006): 93–118; Lawrence M. Friedman, *Guarding Life’s Dark Secrets: Legal and Social Controls over Reputation, Propriety, and Privacy* (Stanford: Stanford University Press, 2007), 171–191.

¹⁰ Joanna L. Grossman and Lawrence M. Friedman, *Inside the Castle: Law and the Family in 20th Century America* (Princeton: Princeton University Press, 2011), 110; Angus McLaren, *Sexual Blackmail: A Modern History* (Cambridge, Mass.: Harvard University Press, 2002), 82–92; Jennifer Fronc, *New York Undercover: Private Surveillance in the Progressive Era* (Chicago: University of Chicago Press, 2009), 30, 183–184.

¹¹ Friedman, *Guarding Life’s Dark Secrets*, 186; Allan M. Brandt, *No Magic Bullet: A Social History of Venereal Disease in the United States since 1880*, expanded ed. (New York: Oxford University Press, 1987), 70–77; Timothy J. Gilfoyle, *City of Eros: New York City, Prostitution, and the Commercialization of Sex, 1790–1920* (New York: W. W. Norton, 1992), 177–178, 306–312; Elizabeth Alice Clement, *Love for Sale: Courting, Treating, and Prostitution in New York City, 1900–1945* (Chapel Hill: University of North Carolina Press, 2006), 125–143.

¹² Elaine Tyler May, *Great Expectations: Marriage and Divorce in Post-Victorian America* (Chicago: University of Chicago Press, 1980), 94; Kathy Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia: Temple University Press, 1986), 109–110.

or below the age of fifteen.¹³ Reformers worried that teenage sexual activity would increase as unchaperoned young women continued to enter the workforce and to mingle with men in factories and dance halls.¹⁴ To counter these fears, many states raised the age of consent in the early twentieth century, making it illegal for adult men to have sexual intercourse with underage women. While the standard age of consent had been set at ten in the nineteenth century, most states now raised that age to sixteen or eighteen, classifying once-common acts of consensual sex as statutory rape. In altering these laws, legislators affirmed the widespread public belief that young women were engaging too freely in sexual activity.¹⁵

Anxiety over women's sexual expression also related to marriage, as critics came to resent the gradual embrace of sexuality and camaraderie as tenets of married life – a transformation that culminated with the development of companionate marriage in the 1920s. As historian Christina Simmons notes, supporters of companionate marriage recognized sex as the “glue of marriage,” and they therefore advised couples to establish healthy sexual relations as a way to strengthen their unions. Attempting to separate sex from reproduction, proponents encouraged the use of birth control, which allowed couples to enjoy sex without fear of pregnancy.¹⁶ The rise of companionate marriage worried critics in its acknowledgment of women's capacity for sexual pleasure and in its indication that the primary purpose of marriage need not be a procreative one. It also deepened concerns that gender roles within modern marriages had become too equitable.¹⁷

¹³ Mary E. Richmond and Fred S. Hall, *Child Marriages* (New York: Russell Sage Foundation, 1925), 57.

¹⁴ May, *Great Expectations*, 94–99. See also Peiss, *Cheap Amusements*; Odem, *Delinquent Daughters*, 2–3, 21–25.

¹⁵ *Conte v. Conte*, 81 N.Y.S. 923 (1903); McLaren, *Sexual Blackmail*, 83–84; Stephen Robertson, *Crimes against Children: Sexual Violence and Legal Culture in New York City, 1880–1960* (Chapel Hill: University of North Carolina Press, 2005), 95–135; Grossman and Friedman, *Inside the Castle*, 110; Friedman, *Guarding Life's Dark Secrets*, 182–183; Odem, *Delinquent Daughters*, 8–37. The age of consent for marriage also rose in many states during these decades: see Nicholas L. Syrett, *American Child Bride: A History of Minors and Marriage in the United States* (Chapel Hill: University of North Carolina Press, 2016), 127–135.

¹⁶ Simmons, *Making Marriage Modern*, 121–137. See also Coontz, *Marriage, a History*, 191–215; Gilfoyle, *City of Eros*, 311–312; Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life* (New York: Free Press, 1988), 114–116.

¹⁷ D'Emilio and Freedman, *Intimate Matters*, 266; David R. Shumway, *Modern Love: Romance, Intimacy, and the Marriage Crisis* (New York: New York University Press, 2003), 67–68.

Also central to early twentieth-century anxieties over marriage was the rising popularity of divorce. Between 1870 and 1900, the divorce rate doubled from two of every thousand marriages to four per thousand. Over the first two decades of the new century the rate nearly doubled again, from four divorces per thousand marriages in 1900 to 7.7 per thousand in 1920. By 1924, one out of every seven marriages ended in divorce, approximately fifteen or sixteen times the divorce rate of 1870.¹⁸ Conservative critics castigated divorcees, with particular attention to the moral failings of divorced women; as historian Kristin Celello notes of this era, “‘evil’ was the word most frequently paired with ‘divorce’ in the popular press and in religious and legal circles.”¹⁹ To many detractors, divorce was a negative consequence of women’s entrance into the political realm. In 1912, for instance, Catholic cardinal James Gibbons warned St. Louis men that the passage of a women’s suffrage amendment would further exacerbate the divorce rate. “If woman had equal political rights with men there is a probability that on the slightest provocation she would seek divorce,” Gibbons insisted. “Women under present conditions are too prone to go to the divorce courts, and political equality might make them more so.”²⁰ In such cases, concerns over divorce reflected a fear that women were fleeing their traditional roles as mothers and wives, and embracing new legal and social opportunities that had formerly been denied to them.²¹

Alongside this preoccupation with the divorce rate was a concern that the American family was under threat. As historian Mary Odem explains, progressive reformers feared that alcohol, poverty, and overcrowding led to the deterioration of family units and contributed to female delinquency. Reformers thus pushed working-class and immigrant families to

¹⁸ William Fielding Ogburn, “Eleven Questions Concerning American Marriages,” *Social Forces* 6, no. 1 (1927): 7; Simmons, *Making Marriage Modern*, 112; May, *Great Expectations*, 2; Cott, *Public Vows*, 106–107; Rebecca L. Davis, *More Perfect Unions: The American Search for Marital Bliss* (Cambridge, Mass.: Harvard University Press, 2010), 17–19; Eby, *Until Choice Do Us Part*, 25–35; Mintz and Kellogg, *Domestic Revolutions*, 107–110. On the increasing divorce rate, May writes, “Between 1867 and 1929, the population of the United States increased 300 percent, the number of marriages 400 percent, and the divorce rate 2,000 percent.”

¹⁹ Kristin Celello, *Making Marriage Work: A History of Marriage and Divorce in the Twentieth-Century United States* (Chapel Hill: University of North Carolina Press, 2009), 21.

²⁰ “Gibbons Fears for Women,” *New York Times*, 18 Sep. 1912, p. 1.

²¹ Robert L. Griswold, *Family and Divorce in California, 1850–1890: Victorian Illusions and Everyday Realities* (Albany: State University of New York Press, 1982), 172–175.

embrace a middle-class domestic structure. They encouraged the formation of nuclear families consisting of a breadwinning father, a stay-at-home mother, and two or three children, all of whom lived together in a private home with no boarders. Central to this campaign was the notion that poor parents were having too many children and that adolescent daughters growing up in overcrowded households were prone to lives of sexual depravity.²²

While some progressives worried that working-class parents were having too many children, others feared that increasing numbers of educated white women were abstaining from marriage and motherhood altogether. In 1906, President Theodore Roosevelt raised the alarm over educated women's decisions to pursue careers at the expense of family. In his Sixth Annual Message to Congress, Roosevelt bemoaned the declining birth rate among white, upper-class women and the high birth rate among working-class immigrant populations. He chastised unmarried and childless women, arguing that their decision not to procreate would lead to "race suicide" or the disappearance of the white middle class. He also denounced those women who opted out of marriage and motherhood as "race traitors," and he rebuked them for their "viciousness, coldness, and shallow-heartedness."²³ Such hostilities would persist in the 1910s and 1920s as the white middle-class birth rate continued to fall.²⁴

This backdrop of anxiety over shifting sexual, marital, and reproductive mores helps to explain why the subjects of this book received such outsized attention for nuptials that might strike today's readers as less than scandalous affairs. The varied marital practices in question here, if tepid by contemporary standards, fed into broader turn-of-the-century concerns that the institutions of marriage and family were in states of decay. Amid public worries over declining sexual values, critics came to view shifting marital demographics – a decrease in the number of couples exchanging vows, a mounting divorce rate, and a rising age of first

²² Odem, *Delinquent Daughters*, 104–108.

²³ Laura L. Lovett, *Conceiving the Future: Pronatalism, Reproduction, and the Family in the United States, 1890–1938* (Chapel Hill: University of North Carolina Press, 2007), 91–93; Jackie M. Blount, "Spinners, Bachelors, and Other Gender Transgressors in School Employment, 1850–1990," *Review of Educational Research* 70, no. 1 (2000): 88; Brandt, *No Magic Bullet*, 7–8; Davis, *More Perfect Unions*, 25; Simmons, *Making Marriage Modern*, 20, 95; Elaine Tyler May, *Barren in the Promised Land: Childless Americans and the Pursuit of Happiness* (New York: Basic Books, 1995), 61–64.

²⁴ Wendy Kline, *Building a Better Race: Gender, Sexuality and Eugenics from the Turn of the Century to the Baby Boom* (Berkeley: University of California Press, 2001), 62.